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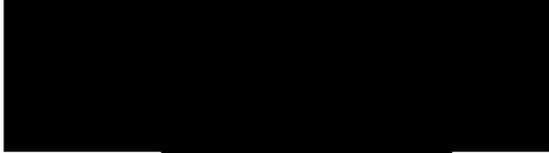
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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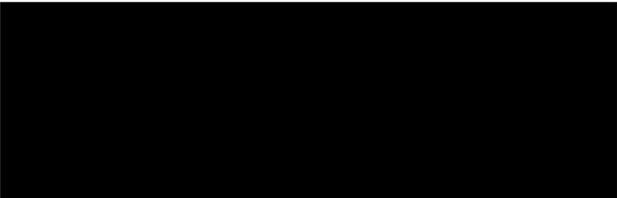


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **JAN 07 2010**
SRC 08 250 50330

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on February 9, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

At the time of the original filing of the petition on August 15, 2008, counsel claimed the petitioner's eligibility based on his "extraordinary achievements" and multiple titles in the field of jiu-jitsu and his experience as an instructor. Counsel never attempted to claim the petitioner's receipt of a major, internationally recognized award, or that he meets any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). On appeal, counsel claims:

[The petitioner's] sport is jiu-jitsu, and, I believe, that his accomplishments enable to consider him as an "alien of extraordinary ability," according to the definition given in the Section 203(b)(1)(A). [The petitioner] has extraordinary abilities in athletics, and his achievements are proved by Certificates and medals taken at multiple competitions (both national and international) and rankings. The Applicant has been practicing Jiu-Jitsu for 10 years, and he is looking forward to continuing his competitor's career. The United States will be substantially benefited by acquiring a competitor of such a level.

As counsel has failed to specify which of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) the petitioner purportedly meets, we have considered the evidence submitted under the criterion we find to be most applicable. If it is counsel's contention that the petitioner meets a particular criterion not addressed in this decision, he has never provided such a statement or argument in this regard.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien’s receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted the following awards:

1. A photograph of a plaque for champion at the Yamasaki Academy in the Grappling Challenge from November 6-7, 1999;
2. A certificate for third place at the Seventh Pan American Jiu-Jitsu Championship for 2001 from the International Brazilian Jiu-Jitsu Federation;
3. A certificate for the first place finish in the No-Gi Super Feather at the Pan American Championship for 2007 from the United States Jiu-Jitsu Federation;
4. A certificate for the third place finish in the Adult Male Super Feather at the Pan American Championship for 2007 from the United States Jiu-Jitsu Federation; and
5. A photograph of a medal for the Pan American No-Gi Jiu-Jitsu Championship for 2008.

Regarding Item 1, there is no name on the plaque indicating who received the award. According to the petitioner's resume, the petitioner finished in second place at the Yamasaki Jiu-Jitsu Tournament. This tournament appears to be a local tournament rather than a national or international tournament.

Regarding Items 2, 3, and 4, the director found that the petitioner failed to establish the prestige and stature of the Pan American Jiu-Jitsu Championships¹. Specifically, the director concluded that the petitioner failed to submit evidence of the selection criteria, if these championships were local or national, and the number of the participants so as to establish that prizes issued at such tournaments are considered nationally or internationally recognized. On appeal, the petitioner submitted information about the Pan American Championship from the website *Wikipedia*. However, there are no assurances about the reliability of the content from this open, user-edited internet site.² See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information from *Wikipedia*. In addition, the petitioner submitted a "Web blog" written by "Caleb" regarding the 2008 Pan American Championship. This "Web blog" fails to indicate the source of information and the full name of the author. Since this "Web blog" appears to be for entertainment purposes only and is based on the opinions and experiences of the author, it lacks the probative value to resolve the concerns of the director. We agree with the conclusion of the director. The petitioner failed to establish that these championships warrant a favorable finding for this highly restrictive classification.

Notwithstanding the above, regarding Item 5, counsel claims that the petitioner was awarded second place at the Pan American Championship No-Gi in October 2008. However, the petition was filed on August 15, 2008. Since the petitioner's award occurred after the filing of the petition, we will not consider the evidence to establish the petitioner's eligibility. Eligibility must be established at the

¹ For clarification, the participation certificates submitted by the petitioner indicate that the beneficiary competed in the International Brazilian Jiu-Jitsu Federation's and United States Jiu-Jitsu Federation's Pan American Games of Jiu-Jitsu rather than the multi-sport Pan American Games. The multi-sport Pan American Games are held every four years in the year preceding the Olympics (2003 and 2007 in this decade) and are conducted by the Pan American Sports Organization. See <http://www.olympics.bm/pasocourses.htm> and <http://www.olympics.bm/panamgamesbermuda teams.htm>, accessed on October 22, 2009, copies incorporated into the record of proceeding.

² Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on October 22, 2009, copy incorporated into the record of proceeding.

time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

In addition, the petitioner submitted his resume indicating that he received awards at the following tournaments/championships:

1. First Place Gi at the Virginia Beach Regional Championship in June 1999;
2. First Place Gi and Third Place No-Gi at the Yamasaki Jiu-Jitsu Tournament in August 1999;
3. Bronze Medal Gi at the Pan American Championships in April 2004;
4. Second Place Gi at the Virginia Beach Regional Championship in November 2005;
5. Second Place Gi and Third Place No-Gi at the East-Coast Championship in June 2006;
6. Second Place Gi and Third Place No-Gi at the East-Coast Championship in September 2006; and
7. Second Place Gi at the Grapplers Quest in February 2007.

The petitioner, however, submitted no documentary evidence of his participation and accomplishment at any of these tournaments/championships. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1).

Regarding this criterion, the director found that the awards submitted by the petitioner did not constitute lesser nationally or internationally recognized prizes or awards for excellence. In addition, the director found that the documentary evidence submitted by the petitioner failed to establish the actual stature and prestige of the competitions, including the significance of the resulting awards. The petitioner failed to establish that he “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout his field. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.³ To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2)

³ While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9,

that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

As it relates to his claim as an instructor, the petitioner failed to submit any documentary evidence that any athlete he has coached or instructed has won a nationally or internationally recognized prize or award.

Accordingly, the petitioner has not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

On appeal, the petitioner submitted an interview between the petitioner and NHB Gear, which was posted on NHB Gear’s website on February 28, 2009. It is noted that NHB Gear is the petitioner’s sponsor. Further, the petitioner failed to establish that this website is major media. Regardless, the petition was filed on August 15, 2008. Since the interview occurred after the filing of the petition (and after the director denied the petition), we will not consider the evidence to establish the petitioner’s eligibility. As previously indicated, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175.

As it relates to his claim as an instructor, the petitioner failed to submit any documentary evidence that he had published material about him as a coach or instructor in professional or major trade publications or other major media.

Accordingly, the petitioner has failed to establish that he meets this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted three websites indicating that the petitioner ranked 23rd in the all-time world grappling ratings for the advanced men’s no-gi featherweight (140-149.9) division, third in the all-time world Brazilian jiu-jitsu brown belt featherweight (140-149.9) division ratings; and second in the 2007 United States grappling ratings. The petitioner also submitted five recommendation letters praising his talents as an athlete and instructor.

1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the above letters are all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner's role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of any immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

We recognize the admiration for the petitioner by his peers, however, the letters submitted on the petitioner's behalf do not specify exactly what the beneficiary's original athletic contributions have been, nor is there an explanation indicating how any such contributions were of major significance in his field such as that he has developed original training techniques, routines, or other methodologies that have been recognized, widely adopted, or otherwise significantly impacted his field in manner consistent with sustained national or international acclaim. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Even if the techniques utilized by the beneficiary were found to be original, there is nothing to demonstrate that they have had major significance in the field. For example, the record does not indicate the extent of the beneficiary's influence on others in his sport nationally or internationally, nor does it show that the field has somehow changed as a result of his work. Further, there is no evidence showing that the petitioner's rankings or talent at the brown belt featherweight division are contributions of major significance to his field. According to the International Brazilian Jiu-Jitsu Federation's website⁴, the petitioner's standing as a brown belt is lower than the higher standings of a black and red belt. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contribution of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner has not established that he meets this criterion.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's

⁴ See <http://www.ibjjf.org> accessed on November 5, 2009, and incorporated into the record.

achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.